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**FISCAL IMPACT STATEMENT**

**LS 6208**

**BILL NUMBER:** HB 1019

**NOTE PREPARED:** May 4, 2015

**BILL AMENDED:** Apr 16, 2015

**SUBJECT:** Common Construction Wage and Public Works.

**FIRST AUTHOR:** Rep. Torr

**FIRST SPONSOR:** Sen. Yoder

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** The bill repeals the common construction wage statute. It also repeals related statutes superseded by the repeal of the common construction wage statute.

The bill increases the "small project" cap for a public works project from \$150,000 to \$300,000. Unless required by federal or state law, the bill prohibits a public agency from establishing, mandating, or otherwise requiring a wage scale or wage schedule for a public works project.

The bill provides that the following apply to all public works projects, except public-private, design-build, and construction manager as constructor agreements:

- (1) Provides that a public works contract may not be structured other than in four contractor tiers.
- (2) Provides that each prime contractor on a public works project must perform at least 15% of the total contract price, as determined at the time the contract is awarded, with its own labor, services, or materials.
- (3) Requires each contractor in each contractor tier to maintain general liability insurance.
- (4) Requires each contractor in each contractor tier to be qualified by the Department of Administration or the Indiana Department of Transportation before doing any work on a public works project.
- (5) Requires certain employees of a public works contract to be "e-verified".
- (6) Provides that a contractor on a public works project may not pay its employees in cash.
- (7) Requires a contractor to comply with certain federal and Indiana laws relating to labor.
- (8) Requires: (A) a contractor on a public works project that employs 10 or more employees to provide access to a training program applicable to the tasks to be performed by the employees in the normal course of their employment; and (B) a tier 1 or tier 2 contractor that employs 50 or more journeymen to participate in an apprenticeship training program that meets the standards established by the United States Department of Labor, Bureau of Apprenticeship and Training.

(9) For a public works contract awarded after June 30, 2016, requires that the payroll and related records of a contractor in any contractor tier must be preserved by the contractor for 3 years after completion of the project work and be open to inspection by the Department of Workforce Development (DWD), which must maintain the confidentiality of all records inspected.

For a public works contract awarded after June 30, 2016, the bill provides that a public agency that suspects the misclassification of one or more workers on the public agency's public works project may request in writing that DWD investigate the suspected misclassification, and if DWD finds information or records supporting the misclassification, DWD may refer the matter to an appropriate agency for further action. The bill provides that a public agency that reasonably suspects a contractor has violated these requirements shall refer certain violations to the appropriate agency for investigation or require the contractor to remedy certain violations not later than 30 days after the agency notifies the contractor of the violation. If the contractor fails to remedy the violation, the bill requires the public agency to find the contractor to be not responsible for a period based on the severity of the violation, but for not more than 48 months. It provides that a finding that the contractor is not responsible may not be used by another public agency in making a determination as to whether that contractor is responsible. It also provides that a determination that a contractor is not responsible is final and conclusive and subject to judicial review under IC 34-13-5.

The bill provides that a person who, with intent to avoid the obligation to obtain worker's compensation coverage, falsely classifies an employee as a non-employee commits worker's compensation fraud. It provides for classification of this crime at various levels.

The bill requires a contractor that, after June 30, 2015, is awarded a public works contract with an estimated cost of at least \$150,000 by a political subdivision to have an employee drug-testing program.

The bill requires the Indiana Department of Labor to submit to the General Assembly not later than July 1, 2021, a report concerning the effects of the repeal of the common construction wage statute.

The bill makes an appropriation to the Indiana Construction Roundtable Foundation of \$1 M dollars in each of the next two state fiscal years for the Foundation's use in conducting an educational marketing campaign in Indiana.

The bill makes conforming amendments.

**Effective Date:** July 1, 2015.

**Explanation of State Expenditures:** *Public Works Projects - Common Construction Wage:* The bill repeals the common construction wage for public works projects. Indiana's common construction wage is a wage determination system that is often more broadly referred to as a prevailing wage.

The preponderance of the literature on prevailing wage requirements suggests that they increase labor costs in state and local public works projects. Therefore, it is reasonable to state that the removal of the common construction wage may result in lower compensation plus fringe benefits for workers on public works projects. If the removal of the common construction wage results in lower wage and benefit costs as the literature suggests, it could have the following effects:

- Overall labor cost associated with public works projects greater than \$350,000 will be lower with the repeal of the common construction wage statute. The specific amount of cost savings is indeterminate at this time.

- Debt incurred to finance projects may decrease due to the lower project costs, thereby reducing bonding and/or property taxes.
- Additional funds may be available for other public works projects. Also, capital expenses may be reduced, making more funding available for noncapital expenses in project budgets.

*Public Works Projects - New Provisions:* The bill includes a variety of new provisions regulating public works projects:

- (1) All public works projects under \$300,000 may be performed without awarding a public works project (currently, projects under \$150,000 may be performed without awarding a public works project). Therefore, these projects may be performed “in-house” at the discretion of the agency. The total impact from this provision is dependent upon the decision of the Department of Administration and other state agencies (including state educational institutions) that oversee public works projects.
- (2) The bill implements a variety of new requirements for contractors that work on public works projects. The impact on the cost of public works projects from these new requirements is indeterminate at this time. Public works projects that include federal funds must still follow federal procurement guidelines.

*Department of Labor:* The removal of the common construction wage would save the Department of Labor (DOL) resources currently used to provide administrative and technical support to local common construction wage committees. Currently, DOL provides 1.5 FTEs towards these activities.

The bill also requires DOL to submit a report not later than 2021 on the effects of the repeal of the common construction wage. Additionally, the bill requires DOL to regulate compliance with several of the public works requirements mandated in the bill.

Altogether, the requirements in the bill represent an additional workload on the agency outside of the agency’s routine administrative functions, and existing staffing and resource levels, if currently being used to capacity, may be insufficient for full implementation. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

*Quarterly Wage Reports and the Department of Workforce Development (DWD):* The bill requires that DWD make contractor quarterly wage reports available to public agencies for a contractor working on the public agency’s public works project. These requirements are within the agency’s routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

Any individual who discloses information obtained during a wage report inspection commits a Class B misdemeanor.

*Worker Misclassification:* The bill provides that it is a crime for an employer to misclassify employees to avoid the obligation to provide worker’s compensation for those employees. Specifically, misclassification occurs if an employer falsely classifies an employee as either:

- (1) An independent contractor;
- (2) A sole proprietor;
- (3) An owner;
- (4) A partner;

- (5) An officer; or
- (6) A member in a limited liability company.

The offenses for these misclassifications are as follows.

Offense	Value of Obligation Avoided	Number of Employees Not Covered by Worker's Compensation Coverage
Class A misdemeanor	Less than \$1,000	Less than 5
Level 6 felony	At least \$1,000 and less than \$5,000	At least 5 and less than 50
Level 5 felony	At least \$5,000	At least 50

A Level 6 felony is punishable by a prison term ranging from 6 months to 30 months or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The advisory sentence is one year. Level 6 offenders can receive good time credit of 50%. Consequently, Level 6 offenders can be released from prison after serving one-half of the sentence.

A Level 5 felony is punishable by a prison term ranging from 1 to 6 years, depending upon mitigating and aggravating circumstances. The advisory sentence is one year. Level 5 offenders can receive good time credit of 25%. Consequently, Level 5 offenders can be released from prison after serving three-quarters of the sentence.

The average expenditure to house an adult offender was \$19,497 in FY 2014. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,210 annually, or \$8.77 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$89,956 in FY 2014.

*Indiana Construction Roundtable Foundation:* The bill makes an appropriation of \$1 M in FY 2016 and \$1 M in FY 2017 to the Indiana Construction Roundtable Foundation, a nonprofit organization, to use in conducting an educational marketing campaign in Indiana to promote employment opportunities within the state for skilled construction workers.

*Additional Information:* In Indiana, common construction wages are adopted in public hearings of common construction wage committees. Each committee is charged with considering county-specific wage data from the AFL-CIO, Associated Builders and Contractors (ABC), and other interested parties to determine wage rates appropriate to the county where the project is located. The Indiana Department of Labor (DOL) provides assistance to these committees.

A number of studies suggest that these kinds of prevailing wage provisions generally increase the labor cost (compensation plus fringe benefits) of public works projects, and exemption from these requirements may reduce expenditures. There is not agreement within the literature as to the level of increase in labor costs due to the prevailing wage. Unfortunately, data and methodological limitations have caused many studies on prevailing wage requirements to be inconclusive.

Conversely, some studies suggest that these types of prevailing wage systems lead to greater efficiency,

quality, and safety by providing for a stable, well-trained labor force. If such benefits were not realized due to the repeal of prevailing wage requirements, public institutions may experience an increase in costs relating to these factors in the long run. Also, some studies suggest that prevailing wage systems, by increasing the wage to affected workers, increases the overall tax base due to higher incomes and consumption.

The 2013-2015 biennial budget bill appropriated \$848 M in nontransportation construction projects for the state. Transportation capital projects are defined as those in the building of highways, roads, and bridges and are not subject to the common construction wage. The biennial budget bill also authorized \$615 M in bonding for state educational institutions.

**Explanation of State Revenues:** *Worker Misclassification:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. The maximum fine for a Level 6 felony and a Level 5 felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. In addition, some or all of the automated record keeping fee (\$5), judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$2) are deposited into the state General Fund.

**Explanation of Local Expenditures:** See *Explanation of State Expenditures*.

*Worker Misclassification:* A Class A misdemeanor is punishable by up to one year in jail. Also, if more defendants are detained in county jails prior to their court hearings due to the bill, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

**Explanation of Local Revenues:** *Worker Misclassification:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record.

Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$2), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

*Crime Concerning Quarterly Wage Reports:* Individuals who disclose information during an inspection of wage reports by a public agency commits a Class B misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class B misdemeanor is \$1,000. However, any additional revenue would likely be small.

**State Agencies Affected:** Department of Labor; Department of Workforce Development; Department of Administration; Indiana Department of Transportation; Department of Natural Resources; all state agencies and state educational institutions that construct public works projects; Department of Correction.

**Local Agencies Affected:** Local units and school corporations constructing public works projects; trial courts; local law enforcement agencies.

**Information Sources:** Indiana Department of Labor; *Understanding the Indiana Common Construction Wage Act*, [http://www.in.gov/dol/files/CCW\\_Guide\\_2013\\_Complete.pdf](http://www.in.gov/dol/files/CCW_Guide_2013_Complete.pdf); Jeanne Mejeur, National Conference of State Legislatures, [jeanne.mejeur@ncsl.org](mailto:jeanne.mejeur@ncsl.org); Kelsay, Michael P., James Sturgeon, and Kelly Pinkham. *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri*. University of Missouri. 2011. <http://cas.umkc.edu/economics/resources/prevailingwagestudy.pdf>; Kentucky Legislative Research Commission. *An Analysis of Kentucky's Prevailing Wage Laws and Procedures*. Kentucky Legislative Research Commission. 2001. <http://www.lrc.ky.gov/lrcpubs/RR304.pdf>; Fiscal Policy Institute. *The Economic Development Benefits of Prevailing Wage*. 2006. <http://www.fiscalpolicy.org/FPI%20Prevailing%20Wage%20Brief%20May%2006.pdf>; Mahalia, Noonshin. *Prevailing Wages and Government Contracting Costs - A Review of the Research*. Economic Policy Institute. 2008. <http://www.epi.org/publication/bp215/>; Belman, Dale and Paula Voos. *Prevailing Wage Laws in Construction: The Costs of Repeal to Wisconsin*. The Institute for Wisconsin's Future. 1995. [http://www.faircontracting.org/PDFs/prevailing\\_wages/PrevailingWage%20Laws%20in%20Construction%20Cost%20of%20Repeal%20to%20Wisconsin.pdf](http://www.faircontracting.org/PDFs/prevailing_wages/PrevailingWage%20Laws%20in%20Construction%20Cost%20of%20Repeal%20to%20Wisconsin.pdf); Dean, Andrea M. *An Economic Examination of West Virginia's Prevailing Wage Law*. The Public Policy Foundation of West Virginia. 2009. [http://heartland.org/sites/default/files/West%20Virginia%20Prevailing%20Wage%20Report\\_0.pdf](http://heartland.org/sites/default/files/West%20Virginia%20Prevailing%20Wage%20Report_0.pdf); Tim Grogg, IDOA; Brenda Summers, DWD; Robert Alderman, INDOT; Indiana Sheriffs' Association; Department of Correction.

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